

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL CABASSA,

Plaintiff,

vs

9:01-CV-1039

CRAIG GUMMERSON, Corrections Captain,
Auburn Correctional Facility; DONALD SELSKY,
Assistant Deputy Commissioner, Director of
Special Housing/Disciplinary Program; ANTHONY
GRACEFFO, Chief Medical Officer, Auburn
Correctional Facility; GLENN S. GOORD;
HANS WALKER; GARY HODGES; D.W. SEITZ;
TERRY HALCOTT; CHRISTINE COYNE NANCY
O'CONNOR; ANN DRISCOLL; JOHN McCLELLEN;
JOHN ROURKE, Captain, Security Services at
Auburn Correctional Facility; KOORS, Head
Pharmacist at Auburn Correctional Facility;
ROBRT MITCHELL, Correctional Counselor at
Auburn Correctional Facility; and ANDROSKO,
Registered Nurse, Auburn Correctional Facility,

Defendants.

APPEARANCES:

SAMUEL CABASSA
84-A-0364
UpState Correctional facility
P.O. Box 2001
Malone, NY 12953

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
Department of Law
The Capitol
Albany, New York 12224

DAVID N. HURD
United States District Judge

OF COUNSEL:

DAVID L. FRUCHTER, ESQ.
Asst. Attorney General

O R D E R

Plaintiff, Samuel Cabassa, brought this civil rights action pursuant to 42 U.S.C. § 1983. In a Report Recommendation dated June 30, 2008, the Honorable George H. Lowe, United States Magistrate Judge, recommended that defendants' second motion for summary judgment (Docket No. 81) be granted in part and denied in part. Objections to the Report Recommendation have been filed by the parties.

Based upon a de novo review of the portions of the Report-Recommendation to which the parties have objected, the Report-Recommendation is accepted and adopted. See 28 U.S.C. 636(b)(1).

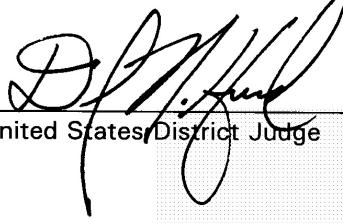
Accordingly, it is

ORDERED that

1. Defendants' motion to dismiss is GRANTED in part and DENIED in part as follows:
 - A. Plaintiffs Fourth Cause of Action is DISMISSED in its entirety;
 - B. Plaintiffs Fifth Cause of Action is DISMISSED to the extent that it asserts:
 - (a) Any Fourteenth Amendment procedural due process claim whatsoever;
 - (b) A First Amendment access to courts claim against defendant Hans Walker;
 - (c) A First Amendment retaliation claim against defendant Hans Walker;
2. Defendants' second motion for summary judgment is otherwise DENIED, so that, surviving that motion is:
 - (a) Plaintiffs First Amendment access-to-courts claim against defendants D.W. Seitz and Craig Gummerson asserted in the Fourth Amended Complaint's Fifth Cause of Action; and
 - (b) Plaintiffs First Amendment retaliation claim against defendants D.W. Seitz and Craig Gummerson also asserted in the Fifth Cause of Action.

IT IS SO ORDERED.

Dated: September 24, 2008
Utica, New York.


United States District Judge